



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

January 24, 2007

Mr. Colin Patrick Walle
Union President
NFFE Local 1998
P.O. Box 2221
Seattle, WA 98111-2221

Re: OSC File No. AD-06-0149

Dear Mr. Walle:

This is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you or other Department of State Bureau of Consular Affairs employees from contacting Congressional members and/or their staff about the vulnerabilities in the passport issuance process. For the reasons explained below, the Hatch Act does not prohibit you or other Department of State employees from contacting members of Congress

As you know, individuals employed by the Department of State are subject to the restrictions of the Hatch Act. See 5 U.S.C. 7322(1)(A). The Hatch Act, 5 U.S.C. §§ 7321-7326, generally permits most federal employees, including employees of the Department of State, to actively participate in nonpartisan activities, partisan political management and partisan political campaigns. However, individuals covered by the Act are prohibited from, among other things, engaging in political activity while they are: (1) on duty¹; (2) wearing any uniform, badge, or insignia that identifies the employing agency of the employee; (3) in any room or building occupied in the discharge of official duties by an individual employed by the federal government; or using any vehicle owned or leased by the United States Government. 5 U.S.C. § 7324; 5 C.F.R. § 734.306. Political activity is defined as "any activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." 5 C.F.R. § 734.101.

In your request for an advisory opinion, you ask whether the Hatch Act would prohibit you and/or other Department of State employees from contacting members of Congress concerning vulnerabilities in the passport issuance process. Specifically, you explain that numerical standards/quotas in the passport issuance process require

¹ Officials of labor organizations who have been given official time to perform representational duties are considered to be "on duty" for purposes of the Hatch Act. 5 C.F.R. § 734.306, Example 12.

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employees to adjudicate the applications at such a rapid pace that the numerical standards/quotas hinder and prevent employees from detecting passport fraud. As a result, you and other Department of State employees would like to consider writing letters or personally visiting members of Congress to express your concerns about the passport issuance process. You also would like to know whether the Act would prohibit you and/or other Department of State employees from asking Congress to enact legislation that would provide the Department of State additional time to process and diligently adjudicate the passport applications.

Section 7321 of the Hatch Act states:

It is the policy of the Congress that employees should be encouraged to exercise fully, freely and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

In addition, the Act provides that employees may be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, legislation or other question of a similar character. 5 C.F.R. § 734.203. For example, “[a]n employee, individually or collectively with other employees, may petition or provide information to Congress as provided in 5 U.S.C. 7211.”² Id. (Example 2).

Based on the above, the Hatch Act does not prohibit covered employees from meeting with Congressional representatives to discuss any federal employment matters. Consequently, the Hatch Act would not prohibit you and/or other Department of State employees from contacting Congress, in writing or in person, concerning potential problems or concerns with the passport issuance process. Similarly, the Act would not prohibit you from asking or encouraging Congress to enact legislation that would allow the Department of State additional time to process the passport applications.

As explained above, the Hatch Act prohibits covered employees from engaging in political activity while: (1) on duty; (2) wearing any uniform, badge, or insignia that identifies the employing agency of the employee; (3) in any room or building occupied in the discharge of official duties by an individual employed by the federal government; or (4) in any government vehicle. However, please be advised that contacting Congress about potential vulnerabilities in the passport issuance process does not constitute “political activity” for purposes of the Hatch Act. That is, contacting Congress about the passport issuance process and/or encouraging Congress to enact legislation concerning

² Section 7211 of Title 5 of the United States Code states: “The right of employees, individually or collectively, to petition Congress or a Member of Congress, or furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”

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adjudicating passport applications is not an “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.” Therefore, the Hatch Act would not prohibit you and/or other Hatch Act covered employees from contacting Congress about the passport issuance concerns while on duty, while wearing any official uniform or insignia, while in any federal room or building, or while in any government vehicle.³ For example, the Hatch Act does not prohibit you from using official time to contact members of Congress about your concerns with the passport issuance process. Similarly, the Act does not prohibit you or other Department of State employees from writing letters or sending electronic mail messages to members of Congress during your lunch period or while on break, even if this activity is performed in a federal room or building.

In your request for an advisory opinion, you also ask whether the Hatch Act would prohibit you from asking or petitioning Congress to request the General Accounting Office to investigate the passport issuance process. None of the prohibitions imposed by the Act would prohibit you from engaging in this activity.

Lastly, you ask whether the Act prohibits you from posting on the union bulletin board information on what members of Congress have or have not done concerning the passport integrity issue. The Hatch Act would not prohibit you from posting on the union bulletin board information on what Congress has or has not done with respect to this issue. For example, the Act would not prohibit you from posting on the union bulletin board information concerning legislation that Congress has proposed or information concerning bills that are pending before Congress. However, please review the materials carefully prior to posting them on the union bulletin board to ensure that the materials do meet the definition of political activity. That is, the Hatch Act prohibits you from positing on a union bulletin board that is located in any federal room or building a document or information that is directed towards the success or failure of a political party, candidate for partisan political office, or partisan political organization. If you have any questions as to whether a particular document would constitute political activity for purposes of the Hatch Act, please do not hesitate to contact our office for guidance.

³ Please be advised that this opinion only addresses the legality of these actions under the Hatch Act. Therefore, you may want to consult with the appropriate Department of State officials to determine whether these activities are prohibited by some other law, rule or agency regulation.

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Please contact me at (202) 254-3667 if you have any further questions.

Sincerely yours,

A handwritten signature in black ink that reads "Amber Bell Vail". The signature is written in a cursive, flowing style.

Amber Bell Vail
Attorney
Hatch Act Unit